

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

EDDIE BROCKLESBY

Claimant

VS.

WESTERN UNIFORM

Respondent

AND

UNITED STATES FIDELITY & GUARANTY CO.

Insurance Carrier

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Docket No. 211,796

ORDER

Respondent requested Appeals Board review of then Assistant Director Brad E. Avery's June 1, 1998, Award. The Appeals Board heard oral argument by telephone conference on January 13, 1999.

APPEARANCES

Claimant appeared by and through his attorney, E. L. Lee Kinch of Wichita, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Kristine A. Purvis of Overland Park, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and has adopted the stipulations listed in the Award.

ISSUES

The respondent appealed the Assistant Director's Award which entitled claimant to permanent partial disability benefits of 78.125 percent based on a work disability. Respondent contends claimant's permanent partial disability benefits are limited to his functional impairment because he voluntarily removed himself from the labor market. Further, the respondent contends, if the claimant is entitled to a work disability, a post-injury wage should be imputed to the claimant because he failed to make a good faith effort to find appropriate employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds the Assistant Director's Award should be affirmed.

The Appeals Board finds the Assistant Director's findings and conclusions, as expressed in the Award, are accurate and supported by the record. It is not necessary to repeat those findings and conclusions in this Order. The Appeals Board hereby approves those findings and conclusions and adopts them as its own.

Specifically, the Appeals Board finds, post-injury, claimant returned to the respondent with permanent work restrictions and respondent did not offer claimant employment within those restrictions. The Appeals Board also finds the record supports the conclusion that post-injury claimant made a good faith effort to find employment and as of the date of the regular hearing, he had not been successful.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Assistant Director Brad E. Avery dated June 1, 1998, should be, and the same is hereby affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of February 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: E. L. Lee Kinch, Wichita, KS
Kristine A. Purvis, Overland Park, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director